



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB0553

Introduced 1/27/2005, by Rep. William B. Black

SYNOPSIS AS INTRODUCED:

New Act

Creates the Motor Fuel Fair Marketing Practices Act. Prohibits price gouging on the retail sale of motor fuel in response to the occurrence of a disaster. Provides that a violation of the federal Robinson-Patman Act with respect to the retail sale of motor fuel constitutes a violation of this Act. Prohibits the practice of selling motor fuel at retail prices that are below cost, where the effect is to injure or lessen competition. Provides for investigation and enforcement by the Attorney General. Provides for civil penalties for violations. Effective July 1, 2005.

LRB094 06725 RXD 36824 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Motor
5 Fuel Fair Marketing Practices Act.

6 Section 5. Policy. The legislature declares that there is
7 a need for a neutral guideline on which to base fuel prices.
8 Oil Price Information Services (OPIS) is a publication that is
9 used as a benchmark by the world to buy and sell U.S. Gasoline
10 and Diesel. OPIS has no stake in fuel transactions, is not
11 funded by the oil industry initiatives, and strictly adheres to
12 antitrust guidelines determined by independent legal counsel.

13 Section 10. Definitions.

14 (a) The definitions in the Motor Fuel Tax Law apply to this
15 Act.

16 (b) "Below cost sale" means the selling of gasoline or No.
17 2 low sulfur clear diesel fuel at retail in the State of
18 Illinois at a price that is below the regional Oil Price
19 Information Service average on the previous day for unleaded
20 regular gasoline or No. 2 low sulfur clear diesel fuel, plus
21 all applicable taxes, and \$0.04 per gallon transportation
22 expense.

23 (c) "Disaster" has the meaning given in Section 4 of the
24 Illinois Emergency Management Agency Act.

25 (d) "Motor fuel price gouging" means the sale of gasoline
26 or No. 2 low sulfur clear diesel fuel at retail in the State of
27 Illinois that is more than the applicable regional Oil Price
28 Information Service average on the previous day for unleaded
29 regular gasoline or No. 2 low sulfur clear diesel fuel, plus
30 \$0.25 per gallon, and \$0.04 per gallon transportation expense.

31 (e) "Oil Price Information Service" (OPIS) means the daily

1 publication containing oil price information that is a widely
2 accepted independent fuel price benchmark for supply.

3 Section 15. Motor fuel price gouging.

4 (a) It is a violation of this Act to engage in motor fuel
5 price gouging in response to the occurrence of a disaster. Each
6 sale constitutes a separate violation.

7 (b) Motor fuel price gouging that occurs within the 7 days
8 following the occurrence of a disaster is rebuttably presumed
9 to have been in response to the occurrence of the disaster.

10 Section 20. Violation of Robinson-Patman Act. Violation of
11 any provision of the federal Robinson-Patman Act (15 U.S.C. 13
12 et seq.) with respect to the retail sale of motor fuel in
13 Illinois constitutes a violation of this Act.

14 Section 25. Sale below cost. It is a violation of this Act
15 to sell motor fuel below cost, where the effect is to injure or
16 lessen competition, except in response to the equally low
17 prices of a competitor. Each sale constitutes a separate
18 violation.

19 Section 30. Violations.

20 (a) If the Attorney General determines that a violation of
21 this Section has occurred or is about to occur, he or she may
22 bring an action in circuit court for appropriate injunctive
23 relief and a civil penalty of up to \$1,000 per actual
24 violation. The court may award attorney's fees and costs to the
25 prevailing party.

26 (b) Civil penalties collected by the Attorney General under
27 this Act shall be deposited into the Attorney General's State
28 Project and Court Order Distribution Fund.

29 (c) Any person who is harmed by a violation of this
30 Section, or the Attorney General on behalf of such persons, may
31 bring an action in circuit court to recover the damages
32 sustained. Upon finding a violation of this Section, the court

1 may award appropriate relief, including restitution,
2 injunctive relief, court costs, and reasonable attorney's
3 fees.

4 Section 35. Powers and duties. The Attorney General has
5 the following powers and duties:

6 (1) to investigate complaints regarding violations of
7 this Act;

8 (2) to seek injunctive relief as appropriate;

9 (3) to seek restitution for victims of motor fuel price
10 gouging and other violations of this Act; and

11 (4) to institute an action to collect a civil penalty
12 for a violation of this Act.

13 Section 40. Confidentiality.

14 (a) Information obtained by the Attorney General in the
15 course of an investigation under this Act, including
16 information from a person who responds to the investigation and
17 designates the information as confidential, must be maintained
18 as confidential until the investigation is completed by the
19 Attorney General and a course of action is determined. The
20 Attorney General may not make known in any manner information
21 obtained in the course of the investigation to persons other
22 than those specified in subsection (c) of this Section. Once
23 the investigation is completed, if there is a settlement or if
24 charges are filed, the information becomes public.

25 (b) This Section does not prohibit the use of confidential
26 information to prepare statistics or other general data for
27 publication, if the information is presented in a manner that
28 prevents identification of particular persons or locations
29 under investigation.

30 (c) For purposes of this Section, references to the
31 Attorney General include other individuals designated in
32 writing and acting on behalf of the Attorney General during the
33 investigation. A person so designated shall preserve the
34 confidentiality of information as provided for in subsection

1 (a) of this Section.

2 (d) A person who is served with a request for information,
3 a subpoena to give testimony orally or in writing, or to
4 produce books, papers, correspondence, memoranda, agreements,
5 or other documents or records under this Act may apply to the
6 circuit court for protection against abuse or hardship.

7 Section 99. Effective date. This Act takes effect July 1,
8 2005.